ARTER & HADDEN

1801 K Street, N.W., Suite 400K
Washington, D.C. 20006-1301
202/775-7100
Facsimile 202/857-0172
Telex 6502156242 MC

ORIGINAL

Writer's Direct Dial Number:

(202) 775-7960

September 27, 1995

RECEIVED

SEP 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

Via Hand Delivery

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115, Notice of Proposed Rulemaking

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone Electronics Corporation, are an original and nine copies of its comments in the above-referenced proceeding.

Please contact the undersigned should there be any questions or further information required.

Sincerely,

James U. Troup
Adam L. Kupetsky

Enclosure

cc: International Transcription Service
Ernestine Creech

No. of Copies rec'd 0+9
List A B C D E

ORIGINAL

RECEIVED

SEP 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
	)	
Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network	))))	CC Docket No. 95-115

DOCKET FILE COPY ORIGINAL

COMMENTS OF TELEPHONE ELECTRONICS CORPORATION

James R. Troup
Adam Kupetsky
Arter & Hadden
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006
(202) 775-7960

September 27, 1995

TABLE OF CONTENTS

SUMMARY

Telephone Electronics Corporation (TEC) supports the Commission's efforts to increase telephone subscribership. TEC's experience is that subscriber inability to pay for long distance toll charges contributes significantly to low subscribership levels. While TEC therefore believes that voluntary toll restrictions when combined with the threat of local disconnection, can effectively increase local telephone subscribership, TEC opposes any mandate by the Commission that local exchange carriers (LECs) offer interstate toll blocking. Instead, TEC urges the Commission to expressly authorize LECs to block all of a subscriber's toll calls, both interstate and intrastate, if that subscriber fails to pay toll charges. While TEC also agrees that such complete toll call blocking and the use of debit cards can help highly mobile, low-income citizens to stay connected to the public switched network, LECs will still require deposits from such highly mobile subscribers to ensure payment for local calls.

TEC also opposes the Commission's proposal to prohibit LECs from disconnecting the local telephone service of subscribers that fail to pay accrued toll charges. From a legal perspective, the FCC has no jurisdiction to take such a step. From a policy perspective, prohibiting local disconnection would remove from LECs the primary means for convincing subscribers to limit long distance calling through, <u>inter</u> <u>alia</u>, the blocking of <u>all</u> toll calls. Moreover, if the Commission expressly authorized LECs to block all of a subscriber's toll calls if that subscriber fails to pay toll

charges, the Commission would reduce the number of local disconnections and increase local telephone subscribership.

TEC also supports the use of Link Up and Lifeline Assistance programs, as well as efforts by local, state and federal governments to educate citizens about discount programs and options to increase subscribership. TEC believes, however, that any expanded use of Link Up should take into consideration the LECs' need to ensure payment through mechanisms such as subscriber deposits.

RECEIVED
SEP 2 7 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
	)	
Amendment of the Commission's	)	CC Docket No. 95-115
Rules and Policies to Increase	)	
Subscribership and Usage of	)	
the Public Switched Network	)	

To: The Commission

Comments of Telephone Electronics Corporation

Telephone Electronics Corporation (TEC), by its attorneys, hereby submits its comments on the FCC's Notice of Proposed Rulemaking (NPRM), released July 20, 1995, seeking to increase subscribership and usage of the public switched network.

I. INTRODUCTION.

TEC is a privately-owned, small entrepreneurial company with operations centered in the rural areas of the United States. The company formed in 1923 when a husband-and-wife team began the operation of the local telephone company serving their hometown in Mississippi.

TEC consists mainly of six small local exchange carriers (LECs): Bay Springs Telephone Company, Crockett Telephone Company, National Telephone of Alabama, Inc., Peoples Telephone Company, Roanoke Telephone Company, and West Tennessee Telephone Company. The largest TEC local exchange carrier, Bay Springs Telephone Company, serves 9,658 access lines, and the smallest TEC local exchange carrier, National Telephone Company of Alabama, serves 1,983 access lines. The carriers serve rural communities in Mississippi, Tennessee, and Alabama.

In its NPRM, the FCC suggests that many people who desire but lack access to the telephone network have had service disconnected due to unpaid bills. In response, the FCC proposes, among other things, to require local exchange carriers to offer voluntary blocking services at reasonable prices, and to prohibit them from disconnecting local exchange service as a penalty for not paying long distance bills. In addition, the FCC seeks comment on other means to limit long distance usage to facilitate retention of local service, and on expanded use of Link Up America and Lifeline Assistance Programs to encourage continued and increased subscribership. Finally, the FCC seeks comment on ways to educate citizens on possible usage limitations and on programs to facilitate subscribership.

TEC appreciates the opportunity to comment on this important issue, and supports the FCC's efforts to increase subscribership. Greater usage of the telephone network serves the interests of consumers as well as telephone companies. While TEC therefore applauds the FCC's focus on subscribership, TEC is concerned by several of the Commission's proposals that could place small telephone companies such as TEC at a great disadvantage.

II. VOLUNTARY CALL BLOCKING AND OTHER LONG DISTANCE RESTRICTIONS ARE EFFECTIVE MEANS OF KEEPING SUBSCRIBERS ON THE NETWORK.

TEC agrees with the Commission that limiting customer access to long distance calling can be an effective means to keep subscribers on the network. As the Commission recognizes, customers are less likely to be able to pay long distance toll charges (including intrastate toll charges) than local exchange charges because long distance charges can be greater and less readily identifiable. By voluntarily limiting its access to long distance calling, a customer can avoid accumulating long distance charges that it is unable to pay. As a result, that customer is more likely to remain connected to the network.

Voluntary limits on customer access to long distance service not only prevent disconnections due to failure to pay long distance charges, but they also provide the billing LEC with greater confidence that the subscriber will continue to pay its bills. A subscriber with little or tightly controlled long distance usage is more likely to be able to pay his or her telephone bills. As a result, the LEC will feel less pressure to disconnect services due to occasional nonpayment by the subscriber. Moreover, the LEC will be more likely to request a lower deposit from the customer, therefore removing a significant barrier to greater subscribership.[1]

TEC believes that the same analysis applies to the task of keeping highly-mobile, low-income citizens connected. These citizens are inherently high-risk customers, and LECs are inclined to seek higher deposits or connection fees from them. These citizens, in turn, are less willing to subscribe, given the costs. LECs would be less inclined to request higher connection fees if the citizens agreed to complete toll call blocking and paid a one-month deposit. They could then use debit cards to make toll calls from any location they might move to.

For these reasons, TEC offers its customers voluntary toll call blocking. However, most customers have no incentive to

---

1 <u>See</u> NPRM ¶ 22.

restrict their usage of toll calling and are therefore unwilling to subscribe to toll blocking services. As explained below, TEC must use the threat of local disconnection to convince subscribers to take advantage of toll call blocking.

III. THE FCC SHOULD NOT MANDATE VOLUNTARY CALL BLOCKING.

Although TEC agrees that voluntary toll call blocking can increase subscribership, it opposes any FCC requirement that voluntary call blocking be offered. For one thing, many carriers are offering voluntary toll call blocking now. Indeed, TEC's LECs offer voluntary toll call blocking at reasonable prices because it is in their interest to do so. Moreover, the costs of offering toll call blocking are often outweighed by the benefits of reducing uncollectible bills, keeping subscribers on the network, and offering limited toll calling. Imposing a new government mandate is unnecessary.

Mandating complete toll call blocking also may discourage more narrowly-tailored solutions to customer disconnections. These solutions may include time-of-day toll call blocking, limiting toll calls to certain areas, or use of debit cards. A voluntary call blocking requirement could therefore be an overbroad, inefficient solution.

TEC also notes that mandating the offering of interstate toll call blocking would impose substantial costs on TEC and would burden existing switching capacity. Additional capacity would need to be purchased and installed in order to support sophisticated routing functions required to distinguish between interstate and intrastate toll calls. Such a mandate would burden TEC with substantial administrative costs for all customers since the complex routing functions would apply to both toll restricted and non-toll restricted customers. In addition, use of the public network would be impaired due to the slower processing that would result if TEC's switches are required to distinguish between intrastate and interstate toll calls.

As a less regulatory approach to increasing subscribership, rather than mandating that LECs offer voluntary toll call blocking, the FCC should protect LECs against liability for blocking toll calls of subscribers who make toll calls but fail to pay toll charges. Clearly authorizing LECs to block toll calls in limited situations would provide the benefits of toll call blocking -- increased subscribership -- and avoid both government mandates and the need for LECs to disconnect local service as a penalty for failure to pay toll charges.[2] Moreover, giving LECs the authority to block all toll calls for nonpayment would give LECs the flexibility to act in an effective, yet cost-reducing manner to increase local subscribership.

IV. <u>THE FCC SHOULD NOT IMPOSE DISCONNECTION RESTRICTIONS ON LECS</u>.

As noted above, the Commission has correctly identified that low subscribership results in part from disconnections due to failure to pay long distance toll charges, and has identified effective ways to combat these disconnections. One measure that the Commission should not, and may not, use to prevent disconnections is to prohibit them.

---

2 As explained below, LECs often must use the threat of disconnection for nonpayment in order to convince subscribers to agree to measures such as call blocking. If LECs had the authority to impose toll call blocking in limited situations, they may no longer require the threat of disconnection.

Without the right to disconnect a customer's local telephone service as a penalty for nonpayment, LECs could be unable to ensure payment. Termination of local exchange service, or the threat of so doing, can sometimes be the only way to obtain payment or to convince subscribers to agree to toll call blocking. As discussed above, however, the better alternative is to authorize and shield from liability those LECs that block toll calls of those customers that fail to pay toll charges.

Moreover, the FCC lacks the authority to prohibit LEC disconnection of local exchange service for failure to pay toll charges. In its NPRM, the Commission states that such a measure would "fall well within our authority over 'interstate communications ... by wire or radio...' and services 'incidental' to the transmission of information by such means, for the purpose of making telephone service available to all of the people."[3] The FCC also suggests that Maryland Pub. Svc. Com.[4] supports its jurisdiction to prohibit disconnection for nonpayment ("DNP"). In that decision, the Commission found that it had authority to regulate DNP of local service for non-payment of interstate charges based on its finding that "interstate telephone service cannot take place without a telephone line being connected to the network."[5] Accordingly, the FCC suggests, its broad jurisdiction covers the

---

3 NPRM ¶ 31 (citing 47 U.S.C. §§ 151, 152(a), 153(a)).

4 Memorandum Opinion and Order, 4 FCC Rcd 4000 (1989) (Maryland Pub. Svc. Com.), aff'd Public Service Com'n of Maryland v. FCC, 909 F.2d 1510 (D.C. Cir. 1990).

5 NPRM ¶ 32 (citing Maryland Pub. Svc. Com., 4 FCC Rcd. at 4006).

"terms and conditions on which interstate service is disconnected,"[6] and therefore would cover DNP.

The FCC's jurisdictional explanation is unavailing. The FCC seeks to invoke its authority over services "incidental" to interstate communications. However, any such authority is strictly limited by Section 2(b)(1) of the Communications Act. That provision fences off from FCC reach or regulation "practices ... for or in connection with intrastate communication service."[7] The practice in question here -- disconnecting local telephone service -- is clearly "for or in connection with intrastate communication service." Plainly, blocking local calls involves the disconnection of intrastate telephone service, not interstate telephone service. Moreover, the Commission's purpose in regulating the practice is to prevent the disconnection of local telephone service, not to prevent the disconnection of interstate toll service. No interstate purpose on the part of the Commission is evident. Regulation of intrastate DNP is clearly an intrastate matter, and is off-limits to the FCC.[8]

---

6 NPRM ¶ 32.

7 47 U.S.C. § 152(b); Louisiana Pub. Svc. Comm'n v. FCC, 476 U.S. 335, 370 (1986) (Louisiana Pub. Svc. Comm'n). Section 2(b)(1) states that "nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service..." 47 U.S.C. § 152(b).

8 Louisiana Pub. Svc. Comm'n, 476 U.S. at 370; Maryland Pub. Svc. Comm'n, 909 F.2d at 1515; see also, People of State of California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); National Ass'n. of Reg. Utility Com'rs. v. FCC, 880 F.2d 422 (D.C. Cir. 1989) (NARUC)

Nor does the FCC's decision in Maryland Pub. Svc. Com. support its jurisdiction over blocking local calls. Indeed, that decision is wholly irrelevant. There, the FCC stated that it could preempt state regulation of intrastate DNP on the basis that such regulation affects interstate telephone service because "interstate telephone service cannot take place without a telephone line being connected to the network."[9] In other words, the FCC had jurisdiction over intrastate DNP only because the state regulation at issue could not be applied to local services without also applying to interstate services.

The FCC's proposal in this proceeding presents a different scenario. Current technology permits LECs to provide local call blocking without affecting interstate telephone service. TEC's switches are currently capable of screening all local calls while allowing interstate telephone service.[10] As a result, states can regulate local call blocking without also affecting interstate telephone service. The FCC admits that state regulation of intrastate DNP is possible without affecting interstate services. According to the FCC, "switching technology has advanced to a point where there may be, for all practical purposes, no technical barrier to selective blocking of long distance calls."[11] Clearly, if it is possible to block all long distance calls, it is just as

---

[9] NPRM ¶ 32 (citing Maryland Pub. Svc. Com., 4 FCC Rcd. at 4006).

[10] Costly modifications to TEC's switches would be required before they could block interstate toll calls without also blocking intrastate toll calls.

[11] NPRM ¶ 29.

easy to block only local calls. Therefore, by disconnecting local service, a LEC does not necessarily affect interstate services.

Even if local exchange and toll call services could not be separated, Maryland Pub. Svc. Com. would still be inapposite because there is no federal interest to protect through the FCC's proposed prohibition. In the decision affirming Maryland Pub. Svc. Com. on other grounds,[12] the D.C. Circuit noted that some reasons for local cutoffs "will either not bear at all upon federal policies or not clash with those policies, and FCC preemption will accordingly not be justified."[13] In this case, the FCC does not (and cannot) identify how intrastate DNP affects interstate telephone services and therefore justifies the FCC's proposed foray into intrastate regulation. The FCC does not seek to preserve access to interstate services. To the contrary, its purpose in regulating intrastate DNP is to limit interstate telephone service usage and preserve local telephone service usage.[14] Furthermore, the NPRM even suggests that disconnecting interstate service would serve the public interest.[15] Since the Commission cannot identify

---

12 While claiming the authority to prohibit intrastate DNP, the FCC actually preempted only state regulation of DNP rates charged to IXCs. It is that preemptive action that was at issue on appeal.

13 Maryland Pub. Svc. Com'n, 909 F.2d at 1515.

14 Interstate service to the disconnected customer arguably would already have been discontinued by long distance carriers due to lack of payment.

15 NPRM ¶ 17.

any federal interest in prohibiting intrastate DNP, the FCC may not regulate it.[16]

The FCC also seeks to assert jurisdiction by claiming a federal interest in making telephone service available to all citizens. This rationale provides no support for the FCC's jurisdiction to prohibit blocking of intrastate calls. Just as the FCC could not set local exchange telephone rates to ensure that local exchange service is affordable, the FCC cannot prohibit the disconnection of local telephone service if customers can still place interstate calls.[17]

V. TEC SUPPORTS USING OTHER MEANS TO INCREASE SUBSCRIBERSHIP.

One important way to increase subscribership is to better target the allocation of USF funds to high cost local exchange carriers. TEC supports FCC efforts to better target USF assistance to help local exchange carriers increase subscribership. USF assistance enables high cost LECs to maintain reasonable prices which, in turn, makes it possible for more people to afford telephone service.

TEC also generally supports an expansion of the Commission's Link Up America and Lifeline Assistance programs. Targeting these programs to those who are least able to afford telephone service

---

16 Maryland Pub. Svc. Com'n, 909 F.2d at 1515; see also, California I, 905 F.2d at 1243-45; NARUC, 880 F.2d at 427-8, 430.

17 Even assuming that increasing local subscribership was a legitimate interstate policy, it is not clear that prohibiting DNP would achieve this goal. For example, the FCC's proposal would not prohibit local disconnection for nonpayment of intrastate toll calls, which constitute the majority of TEC's toll traffic.

could increase subscribership. TEC notes, however, that such measures, alone, may not increase subscribership substantially. To be effective, these programs should be used in conjunction with voluntary or LEC-imposed toll blocking services, to provide LECs with confidence that they can obtain payment. Otherwise, LECs will require higher deposits to ensure that customers pay their share of the connection charges.

TEC also supports outreach efforts to educate the public about programs to increase subscribership and to assist in implementing such programs. While TEC believes that local and state governments have primary responsibility for educating citizens about discount and assistance plans, it is willing to train the employees in its customer service departments to educate customers about programs designed to increase subscribership. LECs could also help to implement other programs. For example, as part of a state or federal public assistance program, recipients could receive one or several debit cards that would permit them to control interstate usage, and could meet with LEC representatives to discuss phone service. During such meetings, LECs could also help each customer design a call blocking program that would be most suitable for that customer's economic situation and provide the greatest opportunity for each customer to stay connected to the public network.

VI. CONCLUSION.

TEC applauds the Commission's effort to increase subscribership to the public switched network. For the reasons discussed above, however, TEC opposes any FCC mandate requiring LECs to provide interstate call blocking. TEC already offers total toll call blocking service of <u>both</u> interstate and intrastate toll calls at reasonable prices, but needs the ability to block local calls for failure to pay long distance toll charges, to provide an incentive for customers who fail to pay toll charges to agree to toll call blocking. A more effective solution would be to clearly authorize LECs to block, and protect them from liability for blocking, <u>all</u> toll calls if customers fail to pay interstate toll charges. This solution provides the tools for increasing local subscribership without engaging the Commission in unnecessary government regulation that lies outside the Commission's interstate jurisdiction.

Respectfully submitted,

Telephone Electronics Corporation

By: ______________________________

James U. Troup
Adam Kupetsky

Its Attorneys

Arter & Hadden
1801 K Street, N.W. Suite 400K
Washington, D.C. 20006
(202) 775-7100

September 27, 1995

alk00060